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10/643,740

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Stephan Kurt Gipp

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EXAMINER

TO, JENNIFER N

ART UNIT

PAPER NUMBER

2195

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/643,740 | Applicant(s) GIPP, STEPHAN KURT | |
| | Examiner JENNIFER N. TO | Art Unit 2195 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-9, and 11-34 are pending for examination.
2. Claims 1, 6, 14, 17, 22, 30 are objected for minor informality. For example, the claimed recited "the resource consumer including at least one of a process and a thread" (i.e. the phrase "at least one of" should be followed by "or" not "and"). Therefore the claims should be corrected as "the resource consumer including at least one of a process or thread".

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 14-16, and 30-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - a. The claim language in the following claims is not clearly understood:
 - i. as per claim 14, lines 2-3, it is not clearly understood what is meant by "a first set of one or more nodes, wherein a node in the first set of one or more nodes includes, a second set of one or more CPUs" (i.e. "a first set of one or more nodes, wherein a node in the first set of one or more nodes includes a second set of one or more CPUs").

- ii. as per claim 30, lines 5-8, it is uncertain whether "one or more flavors" assigned to each resource provider is the same or different with "one or more flavors" assigned to each resource consumer. Line 13, it is uncertain what "the favor" recited here referred to (i.e. the one or more favors).
- iii. as per claim 31, line 1, it is not clearly understood what is meant by "wherein assigning includes" (i.e. which assigning step: the assigning flavors to resource provider, the assigning flavors to resource consumer, or both).
- iv. as per claim 32, line 1, it is not clearly understood what is meant by "wherein assigning flavors includes" (i.e. assigning flavors to resource provider includes, or assigning flavors to resource consumer includes, or both).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-9, and 11-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer (WO 03/0385545), and in view of Breidenbach et al. (hereafter Breidenbach) (U.S. Publication No. 2003/0084085).

7. As per claim 1, Shaffer teaches the invention substantially as claim including a method comprising:

creating, in a computer system, a resource consumer having a plurality of fields associated with the resource consumer, wherein the plurality of fields include a consumer type field, flavor field and a place field, the resource consumer including at least one of a process or a thread (page 8, lines 1-24; page 10, lines 1-4);

assigning the resource consumer one of a set of flavors (page 8, lines 4-5, 20-21);

determining whether the resource consumer is limited to receiving resources including hardware resources and any type of resources from a certain one of a set of resource providers, wherein each of the set of resource providers has one of the set of flavors (page 8, lines 25-28; page 10, lines 5-14);

if the resource consumer is limited to receiving resources from the certain one of the set of resource providers, marking the plurality of fields to indicate that the resource consumer is limited to receiving resources from the certain one of the set of resource providers (fig. 1; page 8, lines 25-28; page 10, lines 5-14);; and

allocating a resource to the resource consumer from one of the set of resource providers whose flavor matches the flavor assigned to the resource consumer (fig. 2; page 8, line 25 through page 9, line 25).

Art Unit: 2195

8. Shaffer did not specifically teach that any type of resources from a certain one of a set of resource providers (a certain one of a set of computing platforms) including software resources.

9. However, Breidenbach teaches that resources from a certain one of a set of resource providers (a certain one of a set of computing platforms) including software resources (paragraph [0030]).

10. It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have combined the teaching of Shaffer and Breidenbach because Shaffer teaching of allocating resources to processing tasks and Breidenbach further supporting that the resources in Shaffer's system could including hardware and software resources would improve the integrity of Shaffer's system by efficiently utilizing the resources available in the system.

11. As per claim 2, Shaffer teaches that marking the plurality of fields to indicate that the resource consumer is limited to receiving resources from the certain one of the set of resource providers includes storing the plurality of fields in memory associated with the resource consumer (fig. 1).

12. As per claim 3, Shaffer teaches that the resource including a physical memory (page 5, lines 25-29).

13. As per claim 4, Shaffer teaches that a resource provider includes one or more central processing units (page 5, lines 20-29).

14. As per claim 5, Breidenbach teaches that the set of flavors includes application flavors, support flavors, and operating system flavors (page 5, lines 20-29, page 12, line 15 through page 13, line 16).

15. As per claim 6, Shaffer teaches the invention substantially as claim including a method comprising:

receiving a request for a resource from a resource consumer, wherein the resource consumer has a first flavor, wherein the resource including hardware resource, the resource having a plurality of fields associated with the resource consumer, wherein the plurality of fields include a consumer type field, flavor field and a place field, the resource consumer including at least one of a process or a thread (page 8, lines 1-24; page 10, lines 1-4);

determining whether the first flavor matches a second flavor of one of a set of nodes (page 8, lines 25-30);

if the first flavor matches the second flavor, determining whether the resource is available in the one of the set of nodes (page 9, lines 1-8); and

if the resource is available in the one of the set of nodes, allocating the resource to the resource consumer (page 9, lines 1-8).

Art Unit: 2195

16. Shaffer did not specifically teach the resource (computing platform) including software resources.

17. However, Breidenbach teaches the resource (computing platform) including software resources (paragraph [0030]).

18. It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have combined the teaching of Shaffer and Breidenbach because Shaffer teaching of allocating resources to processing tasks and Breidenbach further supporting that the resources in Shaffer's system could including hardware and software resources would improve the integrity of Shaffer's system by efficiently utilizing the resources available in the system.

19. As per claim 7, Shaffer teaches that wherein the place field indicates that the resource consumer can only receive resources from a certain one of the set of nodes, wherein each of the set of nodes has a node identifier, and wherein the method further includes determining whether the place field of the resources consumer matches the node identifier of the one of the set of nodes (fig. 1).

20. As per claims 8-9, and 11-34, they are rejected for the same reason as claims 1-7 above.

Response to Arguments

21. Applicant's arguments with respect to claims 1-9, and 11-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see PTO 892 form for details).

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER N. TO whose telephone number is (571)272-7212. The examiner can normally be reached on M-T 6AM- 3:30 PM, F 6AM- 2:30 PM.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Meng-Ai An/
Supervisory Patent Examiner, Art Unit 2195

Jennifer N. To
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